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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	CC Docket No. 97-208
BellSouth Telecommunications, Inc.	)	
and BellSouth Long Distance, Inc.	)	
for Provision of In-Region, InterLATA	)	
Services in South Carolina	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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October 20, 1997

EXECUTIVE SUMMARY

Flouting the dictates of the Telecommunications Act, the Commission's rules implementing the Act, and the Commission's Ameritech Michigan decision, BellSouth insists that it is entitled to provide in-region long distance service at the same time it maintains its stranglehold over the local market. Indeed, BellSouth argues that it should be allowed to enter the long distance market now so that its long distance competitors will be forced to enter the local market in South Carolina.

To begin with, BellSouth turns the facts on their head in blaming competitive local exchange carriers ("CLECs") for the lack of competition in South Carolina. There is no meaningful local competition, and limited progress toward it, because BellSouth has violated the Act in multiple ways, including (1) developing inferior Operations Support Systems ("OSS") for captive CLECs so that CLECs have no chance to match the level of service BellSouth can provide; (2) refusing to commit to performance standards coupled with self-executing remedies, which are the only means CLECs have to ensure adequate, nondiscriminatory service from their sole supplier; and (3) refusing to provide combinations of unbundled elements on nondiscriminatory and cost-based terms, or even procedures for CLECs to gain access to BellSouth's network in order for CLECs to combine elements. Add to this the absence of final prices, let alone any cost-based prices, and a host of other violations of the Act and Commission rules, and it is no mystery why local competition has not yet gotten off the ground in South Carolina. Under these circumstances, even the most aggressive potential competitors would be hard-pressed to sink substantial investments in local facilities and unbundled network elements,

including up-front non-recurring charges.

Knowing full well that it has violated its obligations to open the local market, BellSouth was not foolish enough to seek section 271 authority in a state such as Georgia where its OSS is being put to the test and is flunking -- the very same OSS BellSouth concedes will be used in South Carolina. Instead, having forestalled local competition throughout the BellSouth region by failing to develop the systems and interfaces that CLECs need to compete, BellSouth argues that the very absence of competition justifies interLATA entry in South Carolina based on the paper promises of an SGAT. In other words, having turned the facts on their head, BellSouth seeks to do the same to the law. BellSouth's legal arguments are meritless.

First, as the Commission has firmly established, the usual path to interLATA entry under section 271 is Track A, with its requirement that the BOC provide and fully implement each item on the checklist. Under Track B of section 271, interLATA entry based on an SGAT is available only when no potential competitor requests facilities-based entry in a particular state, or when all competitors who requested such entry negotiated in bad faith or violated implementation schedules in their interconnection agreements. BellSouth does not claim it meets any of these statutory exceptions to Track A. Instead, it invents a fourth reason why it should be allowed to use an SGAT to gain interLATA entry -- a reason Congress did not include in the Act. BellSouth rests its entire application on a test that would permit it to rely on an SGAT if CLECs are not taking "reasonable steps" to becoming facilities-based providers in South Carolina. However, instead of giving BOCs an incentive to prevent CLEC progress -- as the "reasonable steps" test does -- the Act protects against a CLEC boycott by requiring CLECs to request interconnection, negotiate in good faith, and comply with binding implementation schedules.

Unable to satisfy the requirements Congress enacted, BellSouth simply seeks to substitute its own amorphous gauge of "reasonable steps."

Second, even if a "reasonable steps" exception had been enacted, it would defy the purposes of the Act to require CLECs to waste resources on expansion of facilities where, as here, a BOC has refused to open its market. It would be nonsensical to require substantial investments in facilities when a BOC, like BellSouth, has not even offered the systems necessary to comply with the Act. In short, the "ramp up" period the Commission acknowledged in the Michigan Order cannot begin until the necessary checklist items are actually available to CLECs.

Moreover, even where Track B is available, and a BOC is required to "generally offer" each checklist item, it cannot simply recite checklist requirements on a piece of paper and claim that they are available. Even under Track B, BellSouth would have to show that it is truly capable of providing each checklist item on reasonable, nondiscriminatory terms, and on a commercial scale sufficient to satisfy future competitive entry. This is particularly important where, as here, it is indisputable that CLECs are attempting to provide business services in South Carolina, and are attempting to use region-wide systems BellSouth claims to be offering. The Act plainly does not contemplate, for example, that the same OSS that failed in commercial use in Georgia could simply be described in general terms in a paragraph in an SGAT and thereby justify long distance entry in South Carolina.

Putting BellSouth's paper promises to the test has revealed technical deficiencies and hidden obstacles that would have proven disastrous to consumers in any commercial-scale launch. For example, BellSouth missed MCI's due dates a staggering 76% of the time on resale orders. Even for the simplest type of resale order, migrate-as-is, BellSouth completed orders for

MCI in an average of 2.4 days, despite promising to do so on the same day or the next day. These are the kinds of discriminatory acts and obstacles to competition that are not disclosed on the face of an SGAT.

The "findings" of the SCPSC that BellSouth has nonetheless met the checklist requirements should be given exactly the weight they are due under the circumstances -- none whatsoever. Less than two days after post-hearing briefs were filed in the state proceeding, the SCPSC voted to approve BellSouth's application, and subsequently adopted nearly every word of BellSouth's 67-page proposed findings of facts. The SCPSC's wholesale adoption of BellSouth's analysis of its own evidence, without discussion of significant contrary evidence of record, let alone this Commission's definitive interpretation of section 271, should be disregarded. "An agency which expects deference for its decisions . . . must do more than to copy" one party's proposed findings and then "label it a decision," for "[a] determination such as that is essentially worthless."[1]

MCI's Comments are organized as follows:

Part I explains that BellSouth has not satisfied the threshold requirements of section 271 because it has not proven, pursuant to Track A, that there are competing facilities-based providers of residential and business service in South Carolina. Part I further explains that BellSouth is not entitled to proceed under Track B using its SGAT.

Part II explains that BellSouth has not satisfied numerous aspects of the competitive checklist because it has not provided, or even offered to provide, OSS on reasonable,

[1] Mastercraft Flooring, Inc. v. Donovan, 589 F. Supp. 258, 262 (D.D.C. 1984).

nondiscriminatory terms. Some of the many defects in BellSouth's OSS include its failure to offer automated interfaces for reject notifications, service jeopardies, loss notification, and most complex services and unbundled elements. BellSouth also fails to offer an application-to-application interface for pre-ordering or for maintenance and repair, and instead offers sub-par proprietary interfaces which provide far less functionality to CLECs than is available to BellSouth. In addition, BellSouth's systems simply are not operationally ready, as evidenced by data concerning BellSouth's processing of MCI's orders. Notably, BellSouth submitted almost no test data for its own interfaces during the SCPSC proceeding.

Part III explains that BellSouth's application is facially deficient because the SCPSC has not established cost-based prices for network elements. The SCPSC's price docket is not even scheduled to begin until December, 1997, and the interim prices were not determined on the basis of a TELRIC cost study. In addition, the interim prices are not geographically de-averaged, as required by the Commission's Michigan Order.

Part IV discusses BellSouth's failure to offer performance measures and standards needed to ensure access to resale, interconnection and unbundled elements (including OSS) on reasonable, nondiscriminatory terms, including BellSouth's inaccurate representation that performance measures are included in its SGAT. As with BellSouth's technical OSS deficiencies, the absence of adequate performance standards infects multiple checklist requirements.

Part V discusses BellSouth's failure to comply with other checklist requirements, including, among other things, its failure to show that it can provide collocations in a timely, reliable fashion, provide access to its network for combinations of unbundled elements, or make

unbundled local transport and unbundled local switching available.

Part VI discusses BellSouth's failure to demonstrate that it will comply with the requirements of section 272, including its failure to demonstrate present or future compliance as to transactions between BellSouth and its long distance affiliate, BellSouth's failure to demonstrate that there are performance standards in place governing exchange access, and its failure to demonstrate compliance as to use of its official services network.

Part VII explains that BellSouth has not come close to demonstrating that interLATA entry in South Carolina would be in the public interest at this time. BellSouth's public interest argument rests on the fundamentally flawed premise that its entry into the already competitive long distance market would somehow force development of local competition, even though its bottleneck power remains firmly intact, and even though it has not taken the necessary steps to irreversibly open its local market to competition. Congress made clear, as did the Commission in the Michigan Order, that local competition may never develop if BOCs are allowed to offer in-region interLATA service while they retain control of the local bottleneck.

In short, BellSouth's application is fatally flawed in multiple ways and should be denied.

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

I. BELLSOUTH HAS NOT SATISFIED THE THRESHOLD REQUIREMENTS OF SECTION 271.

BellSouth's application cannot succeed unless, as a threshold matter, it demonstrates that it satisfies either "Track A" or "Track B" of section 271, 47 U.S.C. § 271(c)(1)(A) or (B).[2] If BellSouth does not meet that preliminary requirement, no inquiry into the additional requirements for section 271 approval is necessary, as this Commission illustrated in its rejection of SBC's application for Oklahoma.

BellSouth's application plainly is not a proper Track A application, notwithstanding BellSouth's ambiguous suggestion that it might satisfy Track A because some CLECs might have begun providing facilities-based service specified in Track A before BellSouth filed its

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[2] See 47 U.S.C. § 271(d)(3)(A); Application by SBC Communications, Inc., to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Mem. Opinion and Order ¶ 4 (rel. June 26, 1997) [hereinafter cited as Oklahoma Order]; Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Mem. Opinion and Order ¶ 8 (rel. Aug. 19, 1997) [hereinafter cited as Michigan Order].

application, but after its arbitrary 90-day cut-off. See BellSouth Br. at 15-17. BellSouth does not submit any proof that in South Carolina today there are "unaffiliated competing providers" of telephone exchange service "to residential and business subscribers" offering service "exclusively" or "predominantly over their own telephone exchange service facilities," as required to meet Track A. 47 U.S.C. § 271(c)(1)(A). Indeed, the Public Service Commission of South Carolina ("SCPSC") recently adopted BellSouth's proposed order stating that "there is no facilities-based local competition in South Carolina." Entry of BellSouth Telecomm. into InterLATA Toll Market, No. 97-101-C, Order at 19 (July 31, 1997) [hereinafter SCPSC Order]. Although BellSouth studiously avoids repeating that admission in the instant application, it has not presented the slightest evidence that the threshold requirements of Track A have been met. Thus, it is plain that BellSouth has not satisfied Track A at the present time.

A. Track B Is Not Available to BellSouth.

The Act unambiguously states that Track B is available to a BOC in three, and only three, circumstances: (1) if "no such provider has requested the access and interconnection described in [Track A]" within the statutorily-prescribed time frame; (2) if all requesting carriers have negotiated in bad faith; or (3) all requesting carriers have breached the implementation schedules in their approved agreements. 47 U.S.C. § 271(c)(1)(B). In other words, Track B is foreclosed if the BOC has received at least one request for interconnection and access within the meaning of the Act, unless all requesting carriers have negotiated in bad faith or breached implementation schedules in their agreements. See Oklahoma Order ¶ 27. Contrary to BellSouth's contention that a "qualifying request" must come from an operational competitor that is already providing residential and business service exclusively or predominantly over its own facilities, the

Commission determined in its Oklahoma Order that "the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." Oklahoma Order ¶ 27 (emphasis added). Thus, "a 'qualifying request' under [Track B] is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of [Track A]." Id. (emphasis added); see id. ¶ 54. There is no requirement that the requesting carrier be operational or already be providing the services described in Track A.

Moreover, the Commission expressly found that Congress intended Track B to be foreclosed once interconnection requests from potential facilities-based providers were received, notwithstanding that this would create a necessary ramp-up period during which a BOC was barred from seeking entry via Track B but could not yet rely on Track A because no competitor had become operational. "Congress intended to preclude a BOC from proceeding under Track B when the BOC receives a request for access and interconnection from a prospective competing provider of telephone exchange service," Oklahoma Order ¶ 34, and "Congress must have understood that there would often be some time when Track B is unavailable, but the BOC has not yet satisfied the requirements of section 271(c)(1)(A)." Id. ¶ 45.

This conclusion reflects Congress's intent that Track A be the primary means of in-region interLATA entry, with Track B serving as a limited exception, included in the Act only to guard against a refusal of competitors to request interconnection, or an effort by all qualifying requestors to negotiate in bad faith or violate implementation schedules contained in their agreements. See Oklahoma Order ¶¶ 41-46. The fact that new local competitors require a ramp-up period in order to become operational -- during which time the BOC must at a minimum make all checklist items available -- does not, therefore, mean that BOCs should be permitted to enter the long distance

markets in their regions via Track B during the interim. Pursuant to the Act, as long as requests from potential facilities-based providers have been received, and the requesting providers have not been found to have negotiated in bad faith or violated implementation schedules, Track B is foreclosed.

B. BellSouth Has Received Requests for Interconnection and Access That Will Result in Facilities-Based Competition Once Implemented.

BellSouth has received numerous requests for interconnection and access that, once implemented, will result in facilities-based competition in South Carolina. Many, if not all, of these requests were received at least three months before September 30, 1997, the date of BellSouth's application. The SCPSC noted in July 1997 that it had approved in excess of fifty interconnection agreements between BellSouth and other competitors, and that it had already certified more than ten CLECs to provide local service in South Carolina, including AT&T, MCI, and Sprint. See SCPSC Order at 20. As of September 19, 1997, 83 signed agreements between BellSouth and other carriers were on file with the SCPSC, 41 of which are agreements for interconnection and unbundling, not merely for resale. Aff. of Gary Wright, BST App. A, Vol. 5, Tab 16, Attachment WPE-A. MCI, for one, has entered into an agreement with BellSouth for interconnection and access that was approved by the SCPSC last month.[3] Id.

The interconnection agreements that the SCPSC has already approved include an arbitrated agreement between AT&T and BellSouth, covering, among other things, facilities-based service,

[3] Like most CLECs, MCI did not engage in simultaneous arbitrations in all states. In order to allow MCI to enter the South Carolina market without the expense and delay of litigating an arbitration proceeding, MCI entered into an interconnection agreement with BellSouth using the terms BellSouth was willing to give MCI.

and an agreement between American Communications Services, Inc. ("ACSI") and BellSouth that ACSI has already begun to implement through construction of a fiber network in four South Carolina cities and a switch due to become operational early in 1998.[4] The existence of these agreements conclusively demonstrates that BellSouth has received qualifying requests for interconnection and access, rendering Track B unavailable. See Oklahoma Order ¶ 62.

BellSouth cannot and does not claim that it may proceed via Track B, despite having received qualifying requests, pursuant to the only two exceptions in Track B. It does not allege that the SCPSC found that any qualifying requestor (let alone every one of them) has negotiated in bad faith or failed to comply with an implementation schedule contained in an agreement. Those are the only conditions under which the Act permits a Track B application once qualifying requests have been made. 47 U.S.C. § 271(c)(1)(B).

C. CLECs in South Carolina Have Not Failed to Take Reasonable Steps Toward Providing Facilities-Based Service to Business and Residential Customers.

BellSouth ignores the statutory requirements for a Track B application, focusing instead on the Commission's suggestion in the Oklahoma Order that it might "reevaluate" the availability of Track B if a BOC can show that no requestor is taking reasonable steps toward implementing its request. See Oklahoma Order ¶ 58. Reading BellSouth's application, one would imagine -- as BellSouth seems to -- that a CLEC's taking "reasonable steps," not BellSouth's receipt of qualifying requests, is the test set forth in the Act for the availability of Track B. Of course, that

[4] See SCPSC 271 Record, No. 97-101-C, Pre-filed Direct Testimony of Riley M. Murphy on Behalf of ACSI, at 3 (June 20, 1997) (BST App. C., Vol. 7, Tab 64, at p.326); id., Cross-Examination of James Falvey, Tr. at 124 (July 10, 1997) (App. C, Vol. 7, Tab 64, at p. 360).

view has no statutory support.

Even less supported is BellSouth's suggestion that "reasonable steps" count only if they were taken by the CLEC more than three months before BellSouth filed its section 271 application. See BellSouth Br. at 10-11. The Act is clear: a request for interconnection and access must be made by the date three months before the BOC applies under section 271. Naturally, the CLEC's steps toward providing local service will follow the request, not precede it or occur at the same time. Essentially, BellSouth's argument amounts to a variation on SBC's failed argument that a CLEC must already be operational when it requests interconnection and access. BellSouth is only somewhat more restrained, claiming that the CLEC must already be taking steps toward becoming operational when it requests interconnection and access. Under the test BellSouth proposes, it would not be required to fully implement the checklist and meet the remaining requirements of Track A even if qualifying requests had been made three months before its filing with this Commission, and even if the requesting carriers had taken substantial steps toward becoming facilities-based in the ensuing three months. BellSouth's test would require a CLEC that requested access and interconnection three months before the section 271 application to negotiate and reach agreement on that request and take steps toward implementing it simultaneously. BellSouth's application is thus predicated on a "test" it made up out of thin air. The fact that BellSouth chooses to ignore CLEC actions over the past three months, in direct contravention of the Act, is a fatal defect in its filing, as BellSouth has the burden to prove that the preconditions for Track B have been satisfied.

The Act in fact contains a provision that does what the nonstatutory "reasonable steps" theory would do -- allows for BOC long distance entry under Track B when CLECs are

unreasonably delaying local competition. But BellSouth does not begin to claim that it satisfies that provision. The relevant provision is section 271(c)(1)(B)(ii), which states that otherwise qualifying requests for interconnection and access do not foreclose Track B entry if the requesting CLECs fail to comply with implementation schedules contained in their agreements. Thus, to the extent CLECs are required to take "reasonable steps" pursuant to the Act, they are required to do so under the terms of a specific implementation schedule, not under any amorphous standard unilaterally proposed by BellSouth. Here, BellSouth has not suggested that any CLEC has failed to comply with such a schedule. And if BellSouth failed to negotiate implementation schedules as part of its interconnection agreements, it cannot be heard now to argue that CLECs are not implementing those agreements in a reasonably timely manner. In sum, the burden is on BellSouth to show that all qualifying requestors have failed to act reasonably, and it can point to no violated schedule that could support such a showing.

In any event, BellSouth's attempt to create a non-statutory exception to Track A is to no avail, because no CLEC reasonably could be expected to have taken greater steps toward providing facilities-based local service in South Carolina than have been taken by CLECs so far. As is discussed elsewhere in these comments, BellSouth has not fulfilled its obligations to provide adequate OSS, has not adopted or even offered to meet critical performance standards needed to establish and maintain checklist compliance, has not established working, enforceable procedures for providing collocation in a timely fashion, has not shown that there are cost-based prices for interconnection and access to unbundled network elements, and has failed in numerous other respects to comply with the Act's requirements. The progress of CLECs in South Carolina is eminently reasonable in the absence of these minimum conditions.

In actuality, CLECs have been taking risks even investing the time and money they have spent in South Carolina so far, when none of these minimum conditions is present. In California, MCI learned that entering the local market before the BOC can actually meet its promises to comply with the Act results in substantial harm to consumers and to MCI. There, MCI rolled out local service based on PacBell's assurances of operational OSS, and when the OSS failed miserably it jeopardized thousands of customers' local service, as well as MCI's reputation.[5] In South Carolina today, with the myriad deficiencies in BellSouth's OSS and other checklist offerings, it would not be reasonable to require any CLEC to sink the investments needed to provide facilities-based service to residential and business customers.

To accept BellSouth's argument would be to invite BOC efforts at gaming the system and to create absurd outcomes. BellSouth's position amounts to an argument that its failure to provide what CLECs need to compete in local markets opens the door for its entry via Track B. BellSouth has not provided systems and procedures adequate to support competitive entry by CLECs, as MCI has learned from its experiences in Georgia. See King Decl., passim; Declaration of Marcel Henry, passim (attached hereto as ex. B). MCI has declined to throw good money after bad by investing in additional facilities-based entry in South Carolina at this time. If the Commission were to conclude that MCI's decision, and the decisions of other CLECs as to the appropriate pace of entry in light of BellSouth's intransigence, gives BellSouth the right to obtain interLATA

[5] See generally MCI v. Pacific Bell (Calif. PUC No. 96-12-026) (Sept. 24, 1997), at 27 (CPUC's findings, among other things, that MCI ceased direct marketing of resale products due to substantial PacBell delays, including PacBell backlogs of between 4,000 and 5,000 orders, and that Pacific Bell admits it had not achieved parity in resale service) (ex. F hereto); Declaration of Samuel King, ¶ 130 (ex. A hereto).

authority via Track B, BellSouth would only be rewarded for failing to comply with the Act's competitive checklist. Moreover, such a conclusion would raise the very real possibility of inconsistent decisions. For example, BellSouth could file a Track A application in Georgia and lose, because CLECs' actual experience there reveals the inadequacy of its OSS as well as other checklist failings, then file a Track B application in South Carolina where the same conditions apply and theoretically could prevail -- precisely because those inadequate OSS and other deficiencies prevented CLECs from further pursuing facilities-based entry. The Act does not contemplate such bizarre results in which BOC intransigence potentially increases the prospects for section 271 authority. The possibility of such a result emphasizes the need for the Commission to apply the unambiguous threshold requirements of Track B, as well as Track A, to screen out meritless applications that would otherwise squander the resources of the Commission and the parties.

Finally, this Commission should dismiss out of hand BellSouth's contention that the FCC should "defer" to the SCPSC's determination that no CLEC is taking reasonable steps toward providing facilities-based competition in South Carolina. See BellSouth Br. at 11-12. The SCPSC's determination must be seen for what it is: a nearly verbatim adoption of BellSouth's proposed findings of fact and law,[6] which ignores any and all contrary evidence. For example, the

[6] The differences between the SCPSC's 69-page order and the proposed order submitted by BellSouth are: (1) on pages 4, 6, and 8, the SCPSC added the words "as modified" after the word "SGAT"; (2) on page 8, the SCPSC corrected the spelling of "Alphonzo" to "Alphonso"; (3) on page 18, the SCPSC corrected BellSouth's typographical error, changing "ONEs" to "UNEs"; (4) on pages 58-59, the SCPSC added a paragraph imposing a cap on interim rates, and inserted corresponding ordering clauses on pages 68-69; and (5) on pages 67-68, the SCPSC added a paragraph striking 87 binders of information filed by BellSouth at the conclusion of its case. Otherwise, the SCPSC's order tracks BellSouth's proposed order word-for-word, including

SCPSC adopted verbatim BellSouth's characterization of ACSI's testimony as revealing a lack of any business plan to provide facilities-based service, see SCPSC Order at 19, even though Mr. Falvey of ACSI stated on the record that ACSI planned to turn up a switch in South Carolina in early 1998. See n. 4, above. When a court or commission engages in wholesale copying of one party's proposed findings of fact and law, neither the parties, the public, nor any reviewing judicial or administrative body can be certain that the matter received the independent evaluation that it deserved. See, e.g., Southern Pacific Communications v. AT&T, 740 F.2d 980, 995 (D.C. Cir. 1984), cert. denied, 470 U.S. 1005 (1985); see also Mastercraft Flooring, Inc. v. Donovan, 589 F. Supp. 258, 262 (D.D.C. 1984) ("An agency which expects deference for its decisions from a court upon review must do more than to copy the government's brief and label it a decision. A determination such as that is essentially worthless."). Under such circumstances, there can be no confidence in the integrity of the process. See Southern Pacific, 740 F.2d at 995. Thus, it is all the more clear that no deference is due the SCPSC, and that this Commission must render the independent evaluation that the state commission failed to perform.

II. BELLSOUTH FAILS TO OFFER OR PROVIDE OSS ON REASONABLE, NONDISCRIMINATORY TERMS.

OSS includes all of the systems, databases, personnel and documentation needed to ensure that the BOC can satisfy customer needs. See Michigan Order ¶¶ 134-35, 137. The Commission has recognized the vital importance of non-discriminatory OSS to meaningful competition. "Operations support systems and the information they contain are critical to the ability of competing carriers to use network elements and resale services to compete with incumbent LECs."

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the discussion of evidence, findings of fact, conclusions of law, spacing, format and punctuation.

See Michigan Order ¶ 129.

As a result, in order to meet the prerequisites of section 271, BellSouth must show that its OSS is non-discriminatory in terms of quality, accuracy, and timeliness for all three modes of competitive entry. See Michigan Order ¶¶ 133, 139, 159. The OSS must be non-discriminatory on its face and it must also be operationally ready. See Michigan Order ¶ 136. This is so even if BellSouth were permitted to rely on Track B. A BOC is not "generally offering" non-discriminatory OSS, as Track B requires, if its OSS fails to work in practice.

BellSouth comes nowhere close to meeting its burden of showing that it provides or even effectively offers non-discriminatory OSS. BellSouth's SGAT does not even include many of the OSS interfaces BellSouth claims to offer. Even with respect to the OSS BellSouth claims to offer, the facial problems are legion. They include the absence of automated processes for key OSS functions such as reject notification and loss notification, the lack of system-to-system interfaces for pre-ordering and maintenance and repair, the use of an ordering process for migrations that leads to loss of dial tone for a significant number of customers, the absence of a process of change management, and a host of others.

In addition, even the limited OSS that BellSouth claims to offer is not operational. The Commission has emphasized that commercial use is by far the best evidence of operational readiness. See Michigan Order ¶¶ 138, 161. Because BellSouth's OSS is regional, experience with commercial use anywhere in the region can demonstrate the readiness -- or lack thereof -- of BellSouth's OSS. See Michigan Order ¶ 156. So long as CLECs somewhere in the region are attempting to use a particular component of BellSouth's OSS, only commercial success in the use of that component can demonstrate readiness.

The Commission found that Ameritech's OSS, especially its Electronic Data Interchange ("EDI") for ordering, was deficient despite over a year of testing with CLECs and several months of commercial use. Indeed, many of the problems with that interface did not become apparent until commercial use began. Here, BellSouth has far *less* experience with its OSS than did Ameritech -- despite the fact that CLECs throughout BellSouth's region have been trying to become operational. And that experience fails to show that BellSouth is operationally ready.

A. BellSouth's SGAT Fails to Include Even the Flawed OSS BellSouth Claims to Offer in its Brief.

Even if the Commission were to conclude that BellSouth is permitted to proceed under Track B, it would have to reject the application because BellSouth's SGAT does not guarantee CLECs access to non-discriminatory OSS. Section 271 requires a BOC filing an application under Track B to show that non-discriminatory access to each of the checklist items is guaranteed in "a statement of the terms and conditions that the company generally offers to provide . . . [which] has been approved or permitted to take effect by the State commission under Section 252(f)." 47 U.S.C. § 271(c)(1)(B). As the Commission has held, a BOC must satisfy Track A using interconnection agreement(s), or satisfy Track B (where it applies) using an SGAT. Michigan Order ¶¶ 7-8. With respect to OSS, BellSouth's SGAT fails to guarantee non-discriminatory OSS even on paper.

BellSouth's SGAT purports to offer access to electronic interfaces to provide operations support functions. See SGAT, § II A.5. But it fails to offer any detail as to what those interfaces will consist of. There is no guarantee that BellSouth will continue to offer an EDI interface for ordering, for example. BellSouth would remain compliant with its SGAT if it turned around

tomorrow and said it would only offer an extremely slow, nonstandard, dysfunctional electronic ordering interface. Moreover, the SGAT explicitly acknowledges that in some instances electronic interfaces do not yet exist. See id.

The SGAT also fails to include offers of very basic OSS functionality. The pre-ordering functions purportedly offered, for example, do not include access to customer service records, see SGAT, § II A(5)(a), which even BellSouth acknowledges are necessary for CLECs. The provisioning functions purportedly offered do not include reject notifications or jeopardy notifications. See SGAT, § II A(5)(c). Except for vague promises about parity, the SGAT, even on paper, fails to offer non-discriminatory OSS.

B. BellSouth's Use of Manual Processes for Vital OSS Functions is Discriminatory.

Even the OSS BellSouth purports to offer CLECs (in promises not included in its SGAT) is discriminatory on its face. For several vital OSS functions, BellSouth lacks an automated method of transmitting information, or, in some cases, lacks any method at all. These functions include: reject notifications, service based jeopardy notifications, loss notifications, and notifications to the local carrier that its customer has changed interexchange carriers.

Manual OSS processes lead to delay, errors, and increased costs. This Commission found that Ameritech's manual processing of a significant number of orders led to extensive modification of due dates, delayed Firm Order Confirmations ("FOCs") and reject notifications, and, in general, to a degradation in performance. See Michigan Order ¶¶ 173, 181, 183, 186, 188, 193. In the case of Ameritech, this Commission was able to make such an assessment in part because of admissions by Ameritech and in part because a staff member of the Wisconsin

Commission had studied the correlation between Ameritech's manual orders and delay. See, e.g., Michigan Order, ¶¶ 172 n. 430, 181 n. 455. BellSouth has not provided sufficient data to conclusively make a similar assessment (BellSouth does not provide separate data on average installation intervals for orders manually processed as opposed to automatically processed, for example). But there is every reason to believe that the problems found with Ameritech are inherent with manual processing and that these problems will increase with increased volumes and complexity of orders. Indeed, the problems with BellSouth are likely to be worse than those with Ameritech, because BellSouth relies on manual processing in many instances, such as loss notification and jeopardy notification, where Ameritech did not.

1. BellSouth's Manual Return of Reject Notifications is Discriminatory.

One reason the Commission found Ameritech's OSS deficient was the length of time it took for Ameritech to notify CLECs that their orders had been rejected. See Michigan Order ¶¶ 186, 188. The Commission correctly found that the extended time period was related to Ameritech's manual processing of a relatively high percentage of orders and a corresponding need for manual processing of these orders before returning a reject message through its EDI. See id.

The situation in BellSouth's region is even worse than in Ameritech's region. BellSouth engages in manual processing of almost all reject notifications -- even for orders that, if entered correctly, would not have fallen out for manual processing -- and it returns these rejects manually via fax. King Decl. ¶¶ 95, 131, 132, 134. This is so even though MCI provided BellSouth with specifications to enable it to return rejects via EDI. Id. ¶¶ 132, 136.

Return of rejects via fax is entirely unacceptable. Reject notification is a vital process, because, until a CLEC is informed that its order has been rejected, it cannot begin work to correct

the order and re-enter it. Manual processing and transmission of rejects vastly slows the process down. Manual processing makes the timing of the process dependent on when BellSouth employees begin work on the order and how long it takes them to work on the order. King Decl. ¶ 133. Manual processing of rejects by BellSouth employees also slows the process down on the CLEC's side of the interface, because BellSouth employees, unlike a computer, often send back cryptic, non-standard error messages which take time for CLECs to decipher and often force them to call BellSouth for clarification. Id. Manual transmission of rejects slows the process further by making the process dependent on whether the fax machine is working, employee schedules, and how long it takes to transmit the fax. Id. Manual transmission of rejects also slows the process on the CLECs' side of the interface, because the CLEC needs to collect the faxes and route them to the individuals responsible for working the rejects (who must carefully keep track of each fax). Id. BellSouth has refused MCI's request to make this process somewhat easier by transmitting on a periodic basis a list of orders that have been rejected. Id.

The manual processing and transmission of reject notifications is likely to be particularly disastrous at the early stages of competition when the percentage of rejects is likely to be especially high and CLECs are establishing their reputation in the marketplace for the quality of their services. See King Decl. ¶ 135. At these early stages, CLECs are still learning the process and are likely to make mistakes. Id. At these stages, BellSouth is likely to reject a high number of orders erroneously, because it has not yet input all necessary edits into its system to prevent erroneous rejects. Indeed, BellSouth's own data show that 65% of automated orders were rejected in July and 66% in August. Aff. of William Stacy (Stacy I Aff.), ex. WNS-41 (BST App. A, Tab 12). Although BellSouth asserts that most of the August rejects were the fault of CLECs, it